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March 22, 2004

The Honorable Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: Application of Volunteer First Services, Inc for a Certificate of Public  
Convenience & Necessity to Provide Competing Telecommunications  
Services within the State of Tennessee

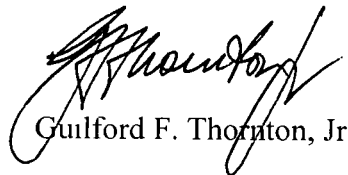
TRA Docket No. 03-00607

Dear Chairman Tate:

On behalf of Citizens Telecommunications Company of Tennessee, LLC ("Citizens"), I am enclosing the comments of Citizens following last week's hearing before Randal Gilliam in the above referenced docket. I am serving a copy on counsel for Volunteer First Services, Inc.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,

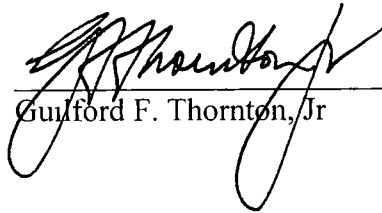


Guilford F. Thornton, Jr

cc. Mike Swatts  
Gregg Sayre

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on D. Billye Sanders, Waller Lansden, Dortch & Davis, 2100 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219, via **hand delivery** on this the 22th day of March, 2004



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Guilford F. Thornton, Jr

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE. APPLICATION OF VOLUNTEER	)	
FIRST SERVICES, INC. FOR A CERTIFICATE	)	
OF PUBLIC CONVENIENCE AND NECESSITY	)	
TO PROVIDE COMPETING	)	Docket No. 03-00607
TELECOMMUNICATIONS SERVICES	)	
WITHIN THE STATE OF TENNESSEE	)	

**COMMENTS OF  
CITIZENS TELECOMMUNICATIONS COMPANY OF TENNESSEE  
CONCERNING THE APPLICATION OF VOLUNTEER FIRST SERVICES, INC.  
FOR A CERTIFICATE OF CONVENIENCE AN NECESSITY TO PROVIDE  
COMPETING TELECOMMUNICATIONS SERVICES**

On Monday, March 15, 2004, the Tennessee Regulatory Authority (the "TRA") held its hearing on the above-referenced application (the "Application") of Volunteer First Services, Inc. ("VFS"). At the hearing, Citizens Telecommunications Company of Tennessee, LLC, an intervenor in this matter, made certain recommendations to the Authority concerning the Application. The purpose of this brief is to outline those recommendations in more detail.

Citizens does not object to the certification of VFS. So far as Citizens can ascertain, VFS satisfies the financial, technical and managerial requirements for licensure contained in TCA 65-4-201(c). However under TCA 65-4-201(a) the Authority has the duty to review the public interest implications of all applications for licensure. The Authority has asserted its public interest prerogatives in considering such applications.<sup>1</sup> Further TCA 65-4-123 sets forth the pro-competition policy of the Tennessee General Assembly regarding the provision of local service. Specifically, the statute provides that it is the policy of the State to "foster the development of an

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<sup>1</sup> See Order of TRA dated March 4, 2004 convening a contested case in *Application of BellSouth Long Distance for a Certificate of Convenience and Necessity*, TRA Docket No. 03-00602, See also TRA Order in *Application of BellSouth Long Distance for a Certificate of Convenience and Necessity*, TRA Docket 97-01404, and TRA Order in *Application BellSouth BSE, Inc. for a Certificate of Public Convenience & Necessity*, TRA Docket No. 98-00879

efficient, technologically advanced, statewide system of telecommunications services **by permitting competition in all telecommunications service markets**" (emphasis added).

VFS acknowledges that 50% of VFS is owned by Ben Lomand Rural Telephone Cooperative, Inc. ("Ben Lomand"), which is a telephone cooperative as defined by T.C.A. § 65-29-102 *See also* T.C.A. § 65-29-130. Currently Ben Lomand, through its wholly-owned subsidiary Ben Lomand Communications, Inc. ("BLC"), competes with Citizens in the Sparta and McMinnville markets, where Citizens is the incumbent carrier. Through VFS, Ben Lomand proposes to compete in the Crossville market, where Citizens is also the incumbent. However Ben Lomand has opposed and continues to resist any attempt by Citizens' to compete in Ben Lomand's territory.

Citizens desires to compete in Ben Lomand's territory. Ben Lomand holds the opinion that Citizens is statutorily prohibited from competing in Ben Lomand's territory. While Ben Lomand and Citizens currently are negotiating an interconnection agreement, Ben Lomand insists that such an agreement must contain language that requires the TRA or another regulatory body with requisite jurisdiction to certify that Citizens can provide telecommunications services within the geographic territory served by Ben Lomand.

Contrary to Ben Lomand's assertions, under current law there is no prohibition on Citizens' competing within Ben Lomand's boundaries. The TRA has the jurisdiction to resolve this issue.

**A. The TRA Has Jurisdiction Over Territorial Disputes With A Telephone Cooperative.**

T.C.A. § 65-29-130 provides that the TRA may exercise jurisdiction over telephone cooperatives such as Ben Lomand for "(2) the establishment of territorial boundaries; and (3) the hearing and determining of disputes arising between one (1) telephone cooperative and other telephone cooperatives, and between telephone cooperatives and any other type of person,

corporation, association, or partnership rendering telephone service, relative to and concerning territorial disputes; . . . ” T.C.A. § 65-29-130(a) Citizens’ dispute with Ben Lomand involves a dispute “relative and concerning” a territorial dispute with BLRTC insofar as BLRTC is asserting that Citizens and/or FCA cannot provide telecommunications service within Ben Lomand’s territory.

**B. Ben Lomand Cannot Rely on T.C.A. § 65-4-201 Because It Is Not An ILEC.**

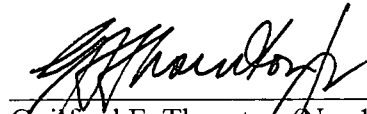
T.C.A. §65-4-201, which protects ILECs with less than 100,000 access lines from encroachment, is not applicable because BLRTC is not an ILEC T.C.A. § 65-4-101(d) defines “incumbent local exchange telephone company” as a “public utility offering and providing basic local exchange telephone service . . . pursuant to tariffs approved by the [TRA] . . . ” T.C.A. § 65-4-101(d). A “cooperative organization” is not a “public utility ” T.C.A. § 65-4-101(a)(5)

**C. 47 U.S.C. § 253(a) Precludes Any Territorial Protection For Ben Lomand.**

Any territorial protection granted to Ben Lomand by state law is preempted and prohibited by 47 U.S.C. § 253(a), which states, “No State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service ” The FCC has ruled that the above-cited T.C.A. § 65-4-201(d) is unenforceable as an unlawful prohibition against competition. *In The Matter Of AVR, L P d/b/a Hyperion of Tennessee, L P Petition for Preemption of Tennessee Code Annotated § 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion’s Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas*, 1999 WL 335803 (F.C.C.), 14 F.C.C. Rcd. 11064 (1999), *pet. for reh’g den.*, 2001 WL 12939 (F.C.C.), 16 F.C.C. Rcd. 1247 (2001)

Based on the authorities and facts cited above,<sup>1</sup> it would violate state statute and the public interest for the Authority to allow Ben Lomand, in the form of VFS, to compete against Citizens without allowing Citizens to compete against Ben Lomand in its service territory. Accordingly Citizens requests that the certification of VFS be made conditional upon the completion of an interconnection agreement between Citizens and Ben Lomand, which allows Citizens to provide competing telecommunications services in Ben Lomand's territory.

Respectfully submitted,



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